NOT TO BE PUBLISHED
IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,	
	2d Crim. No.
Plaintiff and Respondent,	B011378
v.	(Super.Ct.No. A399033)
MICHAEL SHERIDAN McKinney,	
Defendant and Appellant.	

APPEAL from the judgment of the Superior Court of Los Angeles County. Michael Berg, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Appellant.

John K. Van De Kamp, Attorney General, Andrew D. Amerson, Supervising Deputy Attorney General, and Lauren D. Dana, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Appellant appeals from the judgment in which he was convicted of the first degree murder of this adoptive mother. He principally contends that statements, taken in violation of his rights under Miranda v. Arizona (1966) 384 U.S. 436, were unlawfully used for impeachment purposes, and he also urges that the trial court erred in the admission of other evidence.

PROCEDURAL HISTORY

The guilty verdict herein was rendered by a jury which also found that appellant, in the commission of the crime, had used a knife within the meaning of Penal Code section 12022, subdivision (b). Appellant was sentenced to state prison for 25 years to life plus one year for the use of the knife.

STATEMENT OF FACTS

Appellant's mother, Mrs. Betty M. McKinney, was killed in her own bedroom on the night of January 28, 1984, by having her throat cut. In the

house at the time were appellant and his adoptive father, Mr. Quentin McKinney, a truck driver.

Earlier that evening, shortly after dinner, appellant, a bright college student with a high I.Q., who was home for the semester break, asked his parents for a $3,000 loan to enable him to continue in college. The victim "just flat said no." Appellant indicated he was going to attend a movie with a friend. At about 8:30 p.m., Mr. McKinney went to sleep in a spare bedroom. Appellant was still in the house and Mrs. McKinney was watching T.V.

Between 11 and 11:30 p.m., Mr. McKinney was awakened by a loud noise. He arose to find the lights on in the den where appellant slept. No lights were on in his wife's bedroom. Hearing a "growling" sound from that bedroom, however, he entered the room to find his wife bleeding from the mouth. At first Mr. McKinney thought his wife was hemorrhaging as a consequence of circulatory problems for which she had had surgery. As Mr.

McKinney attempted to assist his wife, he then saw that blood was coming from her neck. He frantically tried to call for assistance on the two phones that were located in the bedroom and failing that yelled loudly for his son. When appellant respondent, Mr. McKinney told him to "get the paramedics." Appellant grabbed the larger of the two phones, a white one, and went into the dining room where he began talking and Mr. McKinney heard the words "operator."

Appellant returned to the bedroom, put the telephone on the floor and said "they're coming." Expecting to hear the sound of sirens momentarily, Mr. McKinney continued to try to aid his wife. When appellant suddenly uttered an obscenity and broke the telephone on the floor, Mr. McKinney told him to leave the house and to flag down a police car. Appellant departed only to return saying he had seen no police car. Mr. McKinney also instructed his son to run to nearby business establishments where pay telephones were located

and to call for help. Appellant again department for a time and when he returned "said he didn't have a dime for the phone." Mr. McKinney told appellant that he didn't need a dime but could just push the "O." Appellant again left the house.

Shortly thereafter, Mr. McKinney, who had been in the military service where he had experienced the death of others, heard what he termed a "death rattle" from his wife. Believing she was dead, Mr. McKinney went into the den to try the telephone there. He still had heard no sirens but knew that paramedic response was normally rapid. When he picked up that telephone, it was inoperable.

Mr. McKinney then changed some of his bloody clothing and went next door where he yelled for his neighbor to call the paramedics. When Mr. McKinney came back to the front door of his house, he found his son standing there. Mr. McKinney said to him, "If you have done something to Mom, I'll have to get after you." Appellant made no reply.

Shortly thereafter, the paramedics arrived along with police. However, Mrs. McKinney was already dead.

In the opinion of the deputy medical examiner who performed an autopsy on Mrs. McKinney's body, the cause of death was an eight-inch knife wound on the victim's neck which had severed both a carotid artery and a jugular vein. Additionally, Mrs. McKinney had suffered stab wounds under her left jaw, to her chest and to the back of her neck. Only the first of the four knife wounds was a fatal one. In the doctor's opinion, the neck and chest stab wounds had been caused by a knife sharpened on both edges.

The police crime scene investigation disclosed no signs of forced entry. A pair of dark camouflage pants belonging to appellant bore blood stains of the same blood type as the victims. Officers also found a pair of blood stained men's ski gloves lying on a kitchen counter. The blood stains were likewise of the same blood type as Mrs.

McKinney's.

A telephone cord in the victim's bedroom had been cut by a sharp single-bladed tool and, according to expert testimony, not be any tool such as scissors or shears.

Appellant had owned several knives, including a double-edged "Tekna" knife. In the opinion of the deputy medical examiner, a double-edged knife, similar to the one appellant owned, could have caused the stab wounds to the victim's chest and neck. Appellant had been observed by acquaintances sharpening a knife on occasions. Witnesses also testified that in December 1983, appellant had used a knife to scratch on a dormitory room closet door the inscription "Death is his." On previous occasions, appellant had also strapped the Tekna knife to his leg while wearing either jeans or camouflage pants.

Appellant's father owned a folding "Buck" knife which police confiscated and examined. Laboratory analysis proved there were no blood

stains anywhere on this knife.

Appellant's father testified that appellant did not get along with his mother, and Jane Kelsey, a close friend of appellant's mother, testified appellant was resentful towards his parents because they pushed him through schools and always expected too much of him. In an introspective letter written by appellant to a girlfriend, appellant at length discussed that he felt "neglected, unloved, even abused" by his parents who were "disappointed with me." He wrote that God had given him a "special gift" (i.e., his high intelligence), and that therefore his parents and teachers had "great expectations for me." He stated that his parents "were domineering and possessive beyond belief" and that he was "starved for affection." He expressed the thought that he had turned his life into a junkyard and stated that "I cannot emphasize how much I am going to need my good friends."

Valentina Montessori testified that during the preceding Christmas break, appellant had

visited her at her home in Vancouver, British Columbia, Canada. During the time that they were together in the outdoors, appellant wore the ski gloves which were found blood-stained in his home on the night of the murder.

DEFENSE

Appellant testified in his own behalf and denied killing his mother. According to his story, he arrived home from the movie theatre at exactly 11 p.m. and was let into the house by his mother. He immediately went to bed wearing headphones and listening to a 45-minute cassette tape recording. When he awoke the tape recording had run out, and he got up to go to the bathroom. As he went toward the bathroom, he glanced into the bedroom to see his father sitting on the side of his mother's bed calling her name. there was blood everywhere.

Appellant tried to call for assistance but the phones did not work because the cords had been cut. He eventually summoned the paramedics from a pay telephone.

Appellant admitted ownership of the blood-stained camouflage pants but testified that he no longer wore those as he had outgrown them. He and his close friend, Constantine Potamianos, testified that the blood-stained gloves were not his and that another pair, given to the prosecution by Potamianos, were in fact the gloves he had worn in Canada. His friend also testified that appellant had given him the Tekna knife prior to Thanksgiving of 1983.

APPELLANT'S CONTENTIONS

Appellant contends that the trial court committed prejudicial errors by admitting the following into evidence:

1. Appellant's prior inconsistent statements obtained by police in violation of Miranda.

2. Appellant's possession of two knives prior to the killing of the victim.

3. A letter written by appellant to a friend expressing resentment and hostility toward

his parents.

4. Evidence of appellant's obsession with knives and with a commando lifestyle.

DISCUSSION

I

Appellant contends that the trial court improperly admitted prior inconsistent statements to impeach his trial testimony, statements taken by police in violation of Miranda v. Arizona, supra, 384 U.S. 436. We uphold the trial court's finding that appellant was properly advised of his Miranda rights and had voluntarily waived them.

The case of People v. Bestelmeyer (1985) 166 Cal.App.3d 520, summarizes the standards of review pertinent here: "It is the function of the trial judge to determine whether the defendant did in fact knowingly and voluntarily waive his right to remain silent and his right to have the assistance of counsel. This determination is to be made based on the totality of the circumstances surrounding the interrogation. (Fare v. Michael C.

(1979) 442 U.S. 707; In re Brian W. (1981) 125 Cal.App.3d 590.) The assertion of privilege or its waiver constitutes a question of fact which can only be decided after talking into account the special circumstances of each case. (People v. Turnage (1975) 45 Cal.App.3d 201.) Where the evidence is in conflict, the trial court's findings in this regard will be accepted by the appellate court unless it is palpably erroneous or entirely unworthy of belief. (People v. Brockman (1969) 2 ;Cal.App.3d 1002; People v. Hutchings (1973) 31 Cal.App.3d 16; People v. Watson (1977) 75 Cal.App.3d 384.)" (People v. Bestelmeyer, supra, at p. 526.)

Two separate police interviews of appellant conducted by Los Angeles Police Department Detectives Gilbert Freeze and John Bunch are at issue herein. The first interview occurred at 6:45 a.m. on January 29, 1984, shortly after appellant's father had been interviewed and released. In this first interview, after Detective Bunch advised

appellant of his so-called Miranda rights, Detective Bunch asked him if he understood those rights. Appellant answered "yes." Detective Bunch then asked appellant if he gave up his right to remain silent to which appellant replied, "Sure, why not?" Detective Bunch then asked if appellant gave up his right to speak to an attorney, and appellant responded, "I guess so." Detective Bunch asked, "Is that a yes?" and appellant replied, "OK. I mean why? Why do I need an attorney?" The officer responded, "I don't know. That's what we're here to find out. I don't know if the need an attorney or not." The officer then commenced with his interview informing appellant that he was suspected of killing his mother. The trial court found that appellant had waived his right consult with an attorney prior to asking the question, "Why do I need an attorney?"

Later that day, appellant was formally arrested and booked. Appellant also agreed to take a polygraph examination but none was administered.

On January 31, 1984, at 6:15 p.m., appellant was readvised of his rights under the Miranda decision, and he again indicated that he understood those rights and he also gave up his right to remain silent. Next, Detective Bunch asked appellant if he gave up his right to an attorney prior to being interviewed, and appellant replied, "I have one question. Can I get an attorney tonight." Detective Bunch answered, "I don't know. If you want an attorney, we won't be talking because I cannot talk to you if you want an attorney." Thereupon, appellant respondent, "See, O.K. I want an attorney, but I want to talk to you now so I want to talk to you without the attorney. So I guess I should answer yes to that question. But I also want to talk to an attorney." Detective Bunch stated, "But my problem is I can't get an attorney here now" and appellant stated, "You can't?" The detective then said, "No" and appellant stated, "I want to talk to you then." Detective Bunch further asked, "O.K. Is that what

you are saying is you will talk to me?" and appellant answered, "Yes." Detective Bunch again asked, "You will talk to me without an attorney being present?" Appellant replied, "Yes I will." During the discussion of the availability of an attorney, Detective Bunch informed appellant that an attorney might not be available until his arraignment but the detective also stated that he possibly had an after-hours phone number for the public defender.

Appellant testified on this issue that the officer's statement that an attorney was not available until the arraignment was a factor in his decision to talk with the police. He had no money to hire an attorney and would have waited a short while for an attorney before talking to the police. Appellant also testified that during the second interview, it was his desire to talk with the investigators whether or not there was an attorney available.

Our review of the totality of the

circumstances in this case convinces us that appellant waived his Fifth Amendment rights on each of the two occasions and that he at no time in fact invoked those rights during the interviews.

Appellant relies on People v. Superior Court (Zolnay) (1975) 15 Cal.3d 729, 736, for the proposition that if a suspect "'indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.'" (Emphasis omitted.) That case is distinguishable. In that case, both the defendant and his companion waived their Miranda rights and spoke with police at length. The next day, they returned and again talked with police for at least an hour. Finally, one of the two stated either "I guess we need a lawyer" or "Do you think we need an attorney." The officers then referred the two to a telephone directory which listed local attorneys but thereafter told the suspects that they were guilty and urged them to continue talking with them. The differences

between the Zolnay situation and the instant case are fairly obvious. The defendant's statement there that he needed an attorney came long after the previous waiver of the right to counsel and after extended questioning. The suspects there had also asked the officers to recommend an attorney and at that point they were referred to the telephone directory. The circumstances there clearly showed that the defendant was in fact invoking his constitutional right. Nonetheless, the interrogating officers persisted in pressuring the defendant for an admission of guilt.

No such tactics are revealed in the instant case. There are no softening up statements or questions as in People v. Hinds (1984) 154 Cal.App.3d 222, 235, or People v. Munoz (1978) 83 Cal.App.3d 993, 995-996. Rather, when appellant inquired about an attorney, the officers did no more than seek clarification of his desires. "Clearly the authorities permit clarifying questions even after a suspect says he asserts his

constitutional rights, and that proposition finds support in Miranda v. Arizona, [supra], 384 U.S. 436, 485. Nothing in Miranda precludes the police from clarifying with the suspect whether he understands the questions relating to his constitutional rights and whether by his answers he intends to waive them. It is just as important for police to make certain a suspect means what he says in his answer which asserts his rights as it is to ascertain if he understands the questions sufficiently to knowingly and intelligently waive those rights. Although after a suspect has indicated he wishes to invoke his Miranda rights the police are prohibited from asking substantive questions which portend to develop the facts under investigation (People v. Turnage, [supra], 45 Cal.App.3d 201, 211), they are permitted to clarify whether he comprehended his rights, the question and his answer or intended to waive his Miranda rights, and explain them to him." (In re Brian W., supra, 125 Cal.App.3d 590, 599-600.) Hence, it has

been held that "when a suspect is indecisive and ambiguous in his assertion of his Fifth Amendment rights, the officers may make further inquiries concerning it . . . ." (People v. Marshall (1974) 41 Cal.App.3d 129, 135.)

The questions and responses of the police and appellant in the first interview are not unlike the exchange which took place in People v. Maynarich (1978) 83 Cal.App.3d 476 wherein the defendant's statement was held admissible. There, upon being told that an attorney could be appointed for him, the defendant stated, "But will it make a difference?" The officer replied, "Well, that's your choice. You understand that you are entitled to an attorney?" Defendant replied, "Yes" and finally, "Well, I'll need one, but, you know, you can go ahead and ask me questions." A more explicit waiver followed and the ensuing interview was ruled admissible. (Id., at p. 479.) In the present case, to appellant's question "Why do I need an attorney?" the officer answered, "I don't

know. That's what we're here to find out. I don't know if you need an attorney or not."

The second interview is reminiscent of the waiver circumstances in People v. Turnage, supra, 45 Cal.App.3d 201, 211, footnote 5, in which the admission of the defendant's statements were upheld on appeal. There the waiver conversation between the officer and the defendant was as follows: "A: . . . Yes . . . attorneys and stuff like that I can't afford, one right at the moment. Q: Well, this says that an attorney can be appointed for you. You know if you can't afford one, one will be appointed to represent you. A: Well, I feel I need one. Q: O.K., you'd rather not talk about the case. A: No, I don't mind talking about the case, but I just feel I want it noted that I want an attorney.

"Q: Ok, you want it noted that you do want an attorney? A: Yes, but I don't mind talking to you. Q: Ok. You understand, then, everything that we've talked about and that you do want an

attorney but not necessarily at this particular second. Is that right? A: Yes." (Ibid.)

The court in Turnage observed, "Amid such uncertainly the officer was justified indeed in making further inquiries concerning appellant's intentions. The answers given to these clarifying questions abundantly disclose that appellant was willing to talk about the case and also that he wished to utilize the assistance of an attorney at a later time . . . " (People v. Turnage, supra, at p 212.)

Here, by telling appellant that "IF you wan an attorney, we won't be talking because I cannot talk to you if you want an attorney," Detective Bunch made it absolutely clear that appellant could cut off any questioning simply by indicating his desire for an attorney. Appellant's response indicates his perception of that point as well as his desire to speak to the officers without an attorney: "See, O.K. I want an attorney, but I want to talk to you now. So I want to talk to you

without the attorney. So I guess I should answer yes to that question. But I also want to talk to an attorney."

After a discussion about the availability of an attorney and the officer's statement that he possibly had an after-hours telephone number for the public defender, appellant stated "I want to talk you then." To clarify any lingering ambiguity, the officer inquired further: "O.K. Is that what you are saying is you will talk to me?" Appellant answered "Yes" and the officer inquired again "You will talk to me without an attorney being present?" To that last question, appellant gave the unambiguous answer which clearly constitutes a waiver, "Yes, I will."

We are thus fully satisfied that appellant did not invoke his Fifth Amendment rights and just as clearly waived them. Furthermore, there is obviously no issue of voluntariness related thereto since there were no promises nor any hints of favors nor any direct or subtle threats made to

appellant. And, of course, he himself testified during the hearing on the statements that even during the second interview, it was his desire to talk with the investigator whether or not there was an attorney available. Hence, the trial court properly admitted the statements.[1]

II

Appellant's Prior Possession of Knives

Appellant contends that evidence he possessed two knives prior to the killing of his mother was irrelevant. He bases this contention of irrelevancy on his assertion that the record shows that he did not possess "a knife at any time near the homicide." The assertion is without merit.

"The trial court is vested with discretion in admitting or rejecting proffered evidence and

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1. In light of our conclusion, it is unnecessary to address the People's secondary argument that even if these statements were taken in violation of Miranda, they could be used to impeach a defendant who testifies. (Harris v. New York (1971) 401 U.S. 222, 225-226; c.f., People v. Disbrow (1976) 16 Cal.3d 101, 113.)

its decision will not be reversed on appeal unless there is a manifest abuse of that discretion . . . (Cal. Const., art. VI, § 13; Evid. Code, §§ 352, 353, 354.)" (People v. Wein (1977) 69 Cal.App.3d 79, 90.)

The two knives in question each had dagger-type or double-edged blades. The first, a folding knife, was referred to as a "Gerber" knife and the second, a knife in a plastic carrier with straps, was the "Tekna" knife. It was undisputed that appellant's original Gerber knife had been confiscated by police in September 1983 as an illegally possessed dagger. Appellant's friend, Constantine Potamianos, testified that appellant had given him the Tekna knife prior to Thanksgiving of 1983. The killing of Mrs. McKinney occurred on January 28, 1984. However, appellant's roommate, Christopher Roderick, testified that in early December, shortly after Thanksgiving 1983, appellant came into the dormitory room the two shared and began scratching on the closet door with

a Tekna knife. It was on this occasion that appellant etched the words "Death is his" on that door.

Roderick also testified that he overheard a conversation between appellant and Potamianos after appellant's Gerber knife had been confiscated by the police. In that conversation, appellant referred to that knife as one of his favorites and an expensive one and appeared to be upset about its loss. This testimony also called into question Potamianos' story that appellant had become disinterested in knives after the loss of the knife to police in September.

It is well established that where a specific weapon used to commit a crime is not known, weapons connected to the defendant which could have been used to commit the crime are admissible as circumstantial evidence that defendant was the perpetrator. (People v. Riser (1956) 47 Cal.2d 566, 577; see also, People v. Tahl (1967) 65 Cal.2d 719, 741; People v. De La Plane

(1979) 88 Cal.App.3d 223, 239-240; People v. DeVaney (1973) 33 Cal.App.3d 630, 635; People v. Rinegold (1970) 13 Cal.App.3d 711, 720-721.)

The circumstances of the instant case present obvious relevancy. The deputy medical examiner who performed the autopsy on the body of the victim testified that both the Gerber knife and the Tekna knife, as double-edged knives, were capable of producing the wounds on the body.

The Gerber knife presented at trial was the one confiscated in September 1983 by police and as such was unavailable to appellant to commit the murder. The testimony of Potamianos, if accepted at face value, indicated that the original Tekna knife was unavailable to appellant at the time of the killing. However, testimony of the roommate, Christopher Roderick, showed that either appellant had acquired a second Tekna knife or Potamianos' testimony was false or inaccurate. Moreover, the People had to refute the inference that a Buck knife belonging to appellant's father was the only

knife in the house available for the killing.

Lastly, appellant's bloody camouflage pants which were linked by blood-type to the victim's death, had additional significance. Appellant had worn these pants in conjunction with the Tekna knife, and on two occasions -- once while attending the movie "Apocalypse Now" and the other during a nighttime power outage at his college -- he had strapped the Tekna knife either to his arm or leg before going out.[2/]

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2. The likelihood is that the Tekna knife, presented by Potamianos to the prosecution long after appellant had been arrested, was not in fact the Tekna knife appellant had previously possessed since it did not have straps on the plastic carrier as had the knife previously described by witnesses. Thus, one view of this evidence was that it indicated that Potamianos, in conspiracy with appellant, had proffered both the Tekna knife and a pair of black ski gloves to counter prosecution evidence (1) that the bloody ski gloves found in the kitchen were appellant's and (2) that appellant's Tekna knife had disappeared right after the murder. For this reason, the prosecution presented to the jury a second Tekna knife complete with plastic carrier and straps which witnesses identified as more fully resembling appellant's Tekna knife. Appellant does not raise the point, but we note that "[w]here the actual weapon is not found, it

Hence, we conclude that not only is appellant's assertion that he did not possess "a knife at any time near the homicide" an incorrect assessment of the facts, but under the circumstances of the case, the probative value of the evidence far outweighs any prejudicial effect.

III

Appellant further contends that he was prejudiced by the trial court's admission of evidence concerning his obsession and use of knives and commando garb, by the admission of his roommate's testimony concerning his behavior with knives and by the admission of a letter to a girlfriend. He asserts that such matters constituted evidence of bad character when he himself had not put his good character into

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is quite proper to introduce a replica or similar weapon to the jury as an example of the type of weaponry that might have been used in a crime. (See People v. Wiley (1976) 18 Cal.3d 162, 176; People v. De La Plane, [supra], 88 Cal.App.3d 223, 239.)" (People v. Frausto (1982) 135 Cal.App.3d 129, 143.)

evidence and that they were in any event irrelevant. Appellant's contentions are not well taken.

"Evidence is admissible in a criminal case if it tends logically, naturally, and by reasonable inference to establish any fact material for the People or overcomes any material matters sought to be proved by the defense. (People v. Poland (1963) 219 Cal.App.2d 422, 427; Evid. Code § 210.) The preference is to admit any evidence which may illuminate the transaction or give any weight in determining the issue; the strength or weight of the evidence is determined by the jury." (People v. Demond (1976) 59 Cal.App.3d 574, 588-589.)

"[B]ecause a motive is ordinarily the incentive for criminal behavior, its probative value generally exceeds its prejudicial effect, and wide latitude is permitted in admitting evidence of its existence (People v. Sykes [1955] 44 Cal.2d 166; People v. Gonzales [948] 87 Cal.App.2d 867)." (People v. Lopez (1969) 1 Cal.App.3d 78, 85; see

also People v. Dominguez (1981) 121 Cal.App.3d 481, 498-499.) Likewise, evidence showing quarrels, antagonism, animosity, or enmity between the accused and the victim of a violent offense is proof of motive to commit such offense. (People v. Benton (1979) 100 Cal.App.3d 92, 98; People v. Daniels (1971) 16 Cal.App.3d 36, 46; People v. Lopez, supra, 1 Cal.App.3d 78, 85.)

As set forth in the preceding discussion concerning the admissibility of evidence of appellant's knives, appellant's possession of such knives was without doubt relevant to show his opportunity to commit the killing of his mother and to refute any implication that his father had used his Buck knife to kill the victim. The testimony of appellant's roommate, Christopher Roderick, was admissible to demonstrate that appellant had not divested himself of his knives prior to Thanksgiving 1983 as appellant's friend, Potamianos, testified. As noted previously, appellant associated camouflage pants with wearing

a knife. The bloody camouflage pants found in the house connected the wearer of those pants with the murder. Thus, the connection of appellant's previous possession of the Tekna knife with the camouflage pants was highly relevant.

Appellant's scratching of the phrase "Death is his" on the closet door in his dormitory room is in some respects obscure. It perhaps tends to indicate that appellant's fascination with knives bordered on morbid associations. However, the phrase was more especially relevant on another score. Quite arguably, the peculiar nature of the phrase caused the date and location of appellant's scratching on the closet door to be etched in Roderick's mind, thus proving that appellant was in possession of the probable murder weapon after Thanksgiving of 1983.

Evidence from appellant's roommate and other acquaintances concerning his display and comments concerning his "collection" of knives was also highly relevant to refute the testimony of

Potamianos that after appellant had had the Gerber knife confiscated, he had lost interest in knives and thus had made a gift of his Tekna knife to Potamianos. This relevant evidence gave rise to the clear inference that appellant either had not given Potamianos the knife or had acquired another one similar to it as well as possibly reacquiring a Gerber knife.

Appellant contests on the same grounds of irrelevancy a letter which he wrote to Pam Kouba. That letter amply displays appellant's animosity toward as well as estrangement from his parents. Thus, in conjunction with the fact that appellant's mother had, on the night of her murder, refused to underwrite a student loan, the letter portrays appellant's motive for his mother's murder. In the letter, appellant describes his home as "a prison" and relates that he "felt neglected, unloved, [and] even abused." He explains that these feelings stemmed from his belief that his parents "were disappointed in me." He states that "my parents

were domineering and possessive beyond belief." He also ominously closed the letter with the statement that "I cannot emphasize how much I am going to need my good friends." In other conversations with his acquaintances he described similar feelings and indicated that he was bitter about the fact that he was an adopted child. The evidence did provide a motive for appellant and showed his incentive to kill his mother. Its probative value exceeded any prejudicial effect and the trial court did not err in admitting the evidence. (People v. Lopez, supra, 1 Cal.App.3d 78, 85.)

DISPOSTION

The judgment is affirmed.

NOT TO BE PUBLISHED

BOREN, J.*/

We concur:
HANSON (L. Thaxton), Acting P.J.
LUCAS, J.

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*. Assigned by the Chairperson of the Judicial Council.

PROOF OF SERVICE UNDER RULE 29.5(c)

Re: ANA M. OLIVARES, etc. v.
MICHAEL S. McKINNEY

I, F. MITCHELL, declare that I am over 18 years of age, and not a party to the within cause; my business address is 300 South Spring Street, Los Angeles, California 90013; I served a copy of the attached **PETITION FOR WRIT OF CERTIORARI** on each of the following by placing same in an envelope addressed as follows:

Charles D. Weisselberg, Esq. (3 copies)
Post-Conviction Justice Project
University of Southern California
University Park, **LAW CENTER**
Los Angeles, CA 90089-007

United States Court of Appeals (1 copy)
450 Golden Gate
San Francisco, CA 94101

United States District Court (1 copy)
312 N. Spring Street
Los Angeles, CA 90012

Each said envelope was then, on OCT 14 1993, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid. I thereby have served all parties required to be served.

I declare under penalty of perjury that the foregoing is true and correct. Executed on OCT 14 1993 at Los Angeles, California

DECLARANT
F. MITCHELL